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ABSTRACT

The conditions surrounding appointments of full-time, tenure-tract, teaching faculty and administration produce one area in collective bargaining contracts that affects equally every employee of an institution. Several of these conditions are discussed: initial appointments; appointment authority; conflict of appointment authority; appointment procedures; academic appointments; appointments outside of academic departments; presidential appointments; administrative appointments; rejection of appointment recommendations; acceptance/rejection of appointment; letter of notification; and academic rank of administrators. (JMF)

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COLLECTIVE BARGAINING PERSPECTIVES

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U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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Faculty Appointments

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The conditions surrounding appointments produce one area in collective bargaining contracts that affects equally every employee of an institution of higher education. Due to the numerous legal and ethical issues that may occur between the institution and any employee, from the president to the custodians, this area of the agreement tends to be quite extensive. The focus of this *Perspective* is directed to the conditions surrounding the initial appointments of full-time, tenure-tract, teaching faculty and administrators.

Initial Appointments

While initial appointments are generally stipulated as probationary, they can be made permanent. Reappointments follow basically the same pattern as initial appointments; however, certain variances can be noted. Initial appointments can be made at any rank. The lowest rank is assistant instructor, followed by instructor, assistant professor, associate professor, and professor. The honorary rank of professor emeritus is sometimes included. Some bargaining agreements stipulate the particular requirements for appointment to each rank, except professor emeritus. The criteria include educational attainment in the form of college credits and/or degrees earned, professional experience through positions held, and length of service, plus various research and publication requirements for the higher ranks.

Initial appointments are made on an individual basis. Rank and salary decisions are made independently of tenure. Previous experience is considered, but institutions reserve the right to offer rank to new appointees according to insitutional and budget considerations. Rank and tenure usually are not found to be directly transferable from institution to institution even within the same system.

Departmental members are protected against undue excessive appointments that might overload their upper ranks, as witnessed by the following except:

> No new faculty member should be hired at rank and pay higher than someone already in a department, unless the new person has more experience, is better qualified, and better meets the standards and criteria set by the administration for the position that is open than does any individual in the appropriate department, discipline or disciplines.

Further protection is afforded against appointments at higher rank than the new appointee would normally qualify by contract clauses such as the following:

> Generally, considering criteria other than service in the (specific) college, a new person will not be hired into a rank if he could not be promoted into that rank.

The following clause exemplifies checks against potentially unfair appointments:

> The President of the Union or his designated representative shall have the right to meet with the President of the college or his designated representative to ask questions and be given relevant information concerning the rank of Unit members hired during the effective period of this agreement.

Appointment Authority

The authority to make appointments is found to rest at three distinct levels: the board of trustees, the president, and the academic dean. While the ultimate authority always remains with the board, it can be delegated to the other two levels.

Where the appointment power is retained by the board of trustees, the president and academic dean, or their designates, are allowed only to recommend. However, some boards delegate rather broad appointment powers to the president. The following statement is exemplary of such an arrangement:

> The Board of Trustees has delegated to the President, responsibility for appointment of all faculty at the college. It is understood that the Trustees reserve the right of preview, prior to the appointment of the President's, selection for administrative officers at the level of Dean or higher. All appointments made by the President are to be reported to the Trustees.

Where the president retains the authority to make appointments, academic deans may be given restricted powers of recommendation. An example of active involvement at the presidential level can be seen from this excerpt:

> The chief administrative officer of the. . .colleges shall review the file on each teacher candidate recommended for employment by the College President and may, at his option, conduct a personal interview of the candidate, and is authorized to recommend the candidate, and the terms of employment contract to the Board.

Limited responsibility is delegated to the academic dean's level, with confirmation powers being retained ultimately by the board. When the authority to appoint is delegated, the restrictions are also passed on, usually in the

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form of budgetary constraints. Where the academic dean makes appointments, the president informs him of the monetary limits which cannot be exceeded. This affects the decisions of ranks as well as salary for the positions to be filled as well as for promotions and salary increases for reappointments.

Conflict of Appointment Authority

A direct conflict can be observed among various agreements pertaining to the lowest level of recommendations for appointment. Almost universally, procedures state that no appointment to an academic department can be made without the recommendation of the members of that department. An example can be seen by the following passage:

> . . .in an academic community, . . .matters of appointment, reappointment, promotion and tenure, must have input at the point of closest contact with the faculty members individually affected. Accordingly, the chairman of each department shall review written recommendations in all of these matters from the departmental faculty and any other members of the Institute community who may be affected by these matters which shall include advice as to standards for eligibility, fitness, and evaluation.

Further conflict is shown through clauses which stipulate how the faculty is to be directly associated with the proceedings:

> The faculty in each department and/or area and in the library shall set up such procedures as they deem appropriate to effectuate the foregoing.

Strong faculty oriented procedural statements require that members of the departmental faculty approve of potential new faculty members prior to actual appointment. For example, the following:

> All applicants for classroom faculty positions at any rank shall be reviewed and approved by a majority of qualified voters of the department concerned before the appointment can be made by the President.

Further protection of departmental authority is found in clauses that require departmental members to establish equivalences, should they be needed, in lieu of qualifications.

In some institutions, the ultimate authority for recommendations of appointment is retained by the president. Even in these cases the contracts generally give department members the right to recommend appointments. When extenuating circumstances exist, it is possible for the administration to circumvent "standard procedure." Note the arrangement:

> A faculty member appointed by the President shall be recommended as academically qualified by the academic department in which the faculty member is to serve, except in unusual circumstances. . . .(then). . .the President may appoint a faculty member not recommended as academically qualified by the academic department after consultation with and review by the Faculty Personnel Committee.

Also, under unusual circumstances, the president may be allowed to make exceptions to the standard procedure if it can be shown that the particular appointee would be of particular benefit to the institution:

> Notwithstanding any other provision of this agreement, . . .the President may waive the standard requirements for appointment or promotion to any academic rank with respect to any individual who, in the President's judgment, can make significant contribution to the college; it being understood that this prerogative shall not be used to effectively discriminate against any member of the bargaining unit.

While not explained in great detail, it can be surmised that the kind of person mentioned heretofore might be an ex-president of the United States, an astronaut, or a significant scientist who has expressed a desire to work within a particular institution.

Appointment Procedures

Close observation of appointment procedures indicates that they also vary widely. But as a rule, procedures coincide with the appointment authority of the particular institutions. A standard procedure is observable, however, for academic appointments, for appointments outside academic departments, administrative appointments other than presidential, and for presidential appointments.

Academic Appointments

The department personnel and the department chairman establish the general qualifications in consultation with the appropriate academic dean. But, budgetary restraints, federal regulations, including affirmative action policies, current rank structure, and specific courses to be taught are also brought into consideration.

Advertisement and recruitment are usually held either at the department or college level. The department chairman and the department faculty, or a selection committee, interview candidates and make selections. Their recommendation goes to the academic dean.

After the recommendations are reviewed by the academic dean, they are sent to the president or the vice president of academic affairs with the dean's recommendation. Should the dean not approve of the recommendation, he can return it, at which time he must meet with the faculty and explain his reasons for disapproval.

When recommendations reach the president, he either approves them and forwards them to the board of trustees or rejects them. In the case of rejections, notices are sent to the appropriate dean or the department chairman explaining the reasons for rejection.

Some institutions have developed more complicated appointment procedures. In such cases, a committee for recruitment composed of a set number of faculty members is elected from the department involved and an equal number of members appointed by the division director or dean. This committee is chaired by the appropriate department chairman in whose department the new appointee is to be placed. The chairman is a non-voting member of the committee. The recommendations of this committee are given to the division director, then successively to the vice president of academic affairs, the president and ultimately to the board of trustees, if approved at each succeeding level. If a need exists, the chairman of the affected department and his faculty are allowed to suggest an alternative set of procedures for recommendations at the base level. The successive steps of the procedure remain the same.

Appointments Outside of Academic Departments

There are various needs for appointments outside of the standard departmental teaching faculty. These may include continuing education faculty, counselors, and librarians. In such cases, the appropriate dean, chief librarian or other ranking leader fills the role of academic dean and the appointment procedures parallel closely those covered above.

In the case of continuing education appointments, the associate dean or dean of continuing education is required to consult with the appropriate academic division or department chairman prior to recommendation. In such cases, the department chairman also consults with members of his department.

Presidential Appointments

The search for a new president usually includes representatives of the faculty, board of trustees, and the student body. Faculty representatives are selected by the entire faculty body through an election. Equal membership, normally three, is appointed by the board from its membership. Student members are designated by the student government association and they may range from one person to equal membership on the selection committee. This composite body has the responsibility of reviewing the list of candidates, together with all written data compiled, prior to selecting a slate of finalists to submit to the board of trustees. While the final list of candidates for a position may range from one to ten, most contracts call for the list to be narrowed to three. It is not unusual for a faculty senate committee, including certain administrators of the institution, to review the initial list of applicants prior to the review by the selection committee and eliminate those deemed not qualified or those with incomplete application data.

Administrative Appointments

With the exception of the president of the institution, appointments of administrators are made very similar to appointments of the teaching faculty. Search committees for administrators generally constitute representatives of the community most affected. Vice presidents, deans, and lower level administrators are selected by a committee representing the college or division with which they will ultimately work. Advertisement reaches as broad a community as does the advertisement for the president and is the responsibility of the search committee. After the selection process, the final candidates are interviewed by the committee and other administrators with which the appointee will work, including the president. Recommendations are forwarded to the vice president of academic affairs and to the president. With approvals at each level, the final appointment is made either by the president or the board.

Rejection of Appointment Recommendations

Where the appointment authority is retained at the higher levels, there are several reasons that a recommendation for appointment can be rejected either by the academic dean, the president, or the board of trustees. Most contracts list the following reasons:

1. Lack of attention to or recent changes in budget planning or actual appropriations;
2. Failure to adhere to established contract agreements or affirmative action conditions;
3. Disagreement with present rank structure; and
4. Non-ability to cover specific courses that must be taught or new programs demanded.

Acceptance/Rejection of Appointment

Institutions establish specific deadline dates for letters of appointment to be sent, as well as deadline dates for acceptance. For initial appointments, a universal date is inconceivable, but for reappointments including promotions in rank, position, and/or salary, this date is normally firmly established.

Most contracts allow from fifteen days to thirty days from issuance for the contracts to be returned with the appointee's signature of acceptance. If not returned with signature after the specific limit stated within the letter, the institution must consider the offer rejected.

Letter of Notification

A letter of notification of appointment is then sent to the chosen candidate. Within this letter the specific conditions of appointment are presented. These terms include the rank and length of appointment, stating beginning and ending dates. The exact amount of salary and the proposed payment schedule are included. Any applicable stipulations for reappointment are usually listed. These sometimes include availability of funds and possible enrollment reductions.

More specifically, the following information is usually included in letters of appointment:

1. Effective date of employment.
2. Rank at which employed.
3. Placement on salary level.
4. A list of the field or fields in which the faculty member will be expected to work.
5. His primary assignment.
6. Any specific duties he will be responsible for in addition to his primary assignment.
7. A clause indicating the contract is subject to all terms and conditions of the master agreement.
8. Statement regarding tenure and years in rank.
9. A final date of acceptance by the appointee.

Academic Rank for Administrators

Administrators may be given rank by the department appropriate to their experience and training and according to their individual qualifications as teachers.

Tenured faculty, appointed to administrative positions, other than the president or chief administrative officer of colleges, are usually allowed to retain tenure in their faculty status. That is, tenure is not granted for the administrative position, but for the administrator's status as a faculty member. This is best explained by the following excerpt:

> However, persons assigned administrative responsibility and authority will occupy positions for which the privileges of tenure cannot be extended.

Final Comments

This review of the conditions surrounding appointments indicates few surprises. The contracts cover a very broad

range of institutions from small and large two-year colleges to very large higher education systems of both public and private control. Yet, real differences were found in the orientation to the final authority directed to their presidents, others maintain a tighter control by retaining that privilege.

The vast majority of contracts indicate a direct and meaningful involvement of all departmental faculty in the selection process, while only a limited number tend to ignore or reduce that level of involvement in their appointment procedures.

The greatest contrast is noted in the clauses which state that no appointments can be made to the teaching faculty of any department without the written recommendation of those faculties, and the exception clauses which allow for such appointments in cases where it is believed that a specific potential faculty member will be of particular benefit to the college and/or the whole institution.

HIGHER EDUCATION LAW CASES

From time to time there will be printed in this publication a court case briefed by Rose Twomey, a third-year student in the College of Law at West Virginia University:

Miami-Dade Community College District Board of Trustees v Florida Public Employees Relations Commission, 341 So. 3d 1054 - Dist. Ct. of App. of Fla., First Dist. - Jan. 31, 1977.

Facts: The Public Employees Relations Commission held that chairpersons and program coordinators were not "managerial" employees entitled to bargain collectively under Florida's statutes. The College Board of Trustees petitioned for review of the PERC ruling.

Issue: Whether the duties and responsibilities of chairpersons and program coordinators at Miami Dade Community College are such that they fall within the Florida statute's definition of "managerial" employees (447.203 (4) (a) & (b)) so that such employees are excluded from the right to bargain collectively granted to other employees.

Holding: Yes.

Reasoning: The statute defines "managerial" as those who perform jobs which require the exercise of independent judgement and are not of a routine, clerical and ministerial nature. In addition, if the employee has a role in employee relations or comes in under any of six other categories under 447.203 (4) (a), he must be considered a "managerial" employee. The evidence shows that chairpersons at Miami Dade (1) recommend new faculty and prepare recommendations for promotions and raises, (2) determine what the faculty teaches, (3) adjust grievances, evaluate faculty members, distribute funds for travel, (4) teach, and (5) have responsibility for hiring support personnel such as clerical assistants and student assistants. The court finds sufficient evidence to support the conclusion that chairpersons and program coordinators (who have the same duties) come within the statutory definition of "managerial" employees.

Collective Bargaining Perspectives, a monthly publication of the Department of Education Administration, College of Human Resources and Education, West Virginia University, is intended to be a means to distribute information about the union-management contractual conditions which affect the nature of higher education institutions. The information contained in this publication is extracted from an extensive collection of contracts maintained by the Department.